



Framework 115 Issue No.1



DEALING DIRECT
CONTRACTS & FRAMEWORKS

Outdoor Playground Equipment (and other related items): Supply, Installation and Inspection & Maintenance



USER GUIDE

**Framework Period:
1 August 2013 to 31 March 2016**

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Issue No.1 – 1 August 2013

- This is the first issue of the User Guide.

A revised Issue number is allocated to the User Guide each time a supplier or pricing information is updated. Please visit our website www.espodealingdirect.org to ensure you have the latest Issue number.

KEY FACTS...

Framework Ref: 115

Start Date: 01/08/ 2013

End Date: 31/08/2016

Extension Option:
Up to 31st March 2017

OJEU Contract Notice:
2012/S 238-392304

OJEU Award Notice:
2013/S 149-259131

Collaboration:
Pro5 (ESPO led)

NATIONAL COVERAGE



Further Help or Questions?

David Johnston
0116 265 7943
d.johnston@espo.org

Quote Reference

ESPO Framework 115

OVERVIEW OF OUTDOOR PLAYGROUND EQUIPMENT

Framework Scope

This ESPO framework offers customers a quick, simple and competitive route to purchase a fantastic range of outdoor playground equipment including traditional and innovative play equipment for school and public play areas. The contract also includes provision for natural play areas, sand and water play, parkour areas, multi use games areas (MUGA's), skate / BMX parks, outdoor fitness equipment, bespoke designed equipment from customer's own ideas, a variety of safety surfacing options, line and play design markings and inspection & maintenance

All of the suppliers on this framework have been selected for their experience and ability to provide customers with a comprehensive range of products that combine quality and excellent play value.

This page is intended to provide you with a quick overview of what is available. Please refer to the full User Guide for more information.

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Who can use this Framework?

The framework is available for use nationally by any public sector body in the UK including, but not limited to...

- Schools & Academies
- Local Authority Establishments
- Police & Emergency Services
- NHS & HSC Bodies
- Central Government Departments & their agencies
- Registered Charities

Full details of the classification of end user establishments and geographical areas are available on: <http://www.espo.org/about-us/ojeu-permissible-users.aspx>

Benefits of using the Framework

- **Quick & easy to use...** This framework is already EU/UK **Compliant**. We've already done the procurement work, so there's no need to run a full EU tender.
- **Suppliers** listed on the framework were assessed during the procurement process for their financial stability, track record, experience and technical & professional ability, before being awarded a place on the framework.
- **It's free...** You will not be charged for using this framework.
- **Pre-agreed conditions...** No need to worry about what terms & conditions to use, they've all been pre-agreed under the framework and will underpin all orders placed.
- **Fantastic prices**, for example, six piece low level **Activity Trails** available from as little as **£3,729.33** + vat installed.
- **Great Choice**, choose from a range of suppliers offering leading ranges of both innovative and traditional equipment.

What else can ESPO help you with?

This is one of over 200 frameworks that ESPO has established. If you have found this one useful then here are some examples of others that may be of interest:

- **345 – Fitness Equipment – Supply, Delivery, Installation & Maintenance**
- **107 – Gymnasium & Fitness Equipment Maintenance**

Full details of our framework offer are available on the ESPO website www.espodealingdirect.org

You will also find a range of play equipment in the ESPO Catalogue which is available as either hard copy or via our website www.espocatalogue.org

ESPO can also undertake bespoke procurement exercises on your behalf. Please contact us to discuss your requirements.

What the customers say...

"This Framework was a good fit with our requirements and the process of running a mini-competition to select the most suitable contractors was easy and straightforward. ESPO was knowledgeable, helpful and responsive at all times."

**Corporate Procurement,
LondonBorough of Barnet**

Suppliers

Bendcrete Skateparks
Caloo
Dura-Sport
Eibe Play
Fenland Leisure
Freestyle Skateparks
Gravity Engineering
HAGS-SMP
Kompan
Ludus Leisure
PHS (Matta)

Park Leisure
Parkdale Play & Leisure (PPL)
Pennine Playgrounds
Playdale Playgrounds
Playscheme
Proludic
Russell Leisure
Sutcliffe Play
The Great Outdoor Gym Company
Wicksteed

Full contact details can be found in Section 3 of the full User Guide

How to use this Framework

Step 1 - Complete the Customer Access Agreement (Appendix 1 of the User Guide) and return it to ESPO.

Step 2 - Review this User Guide to establish whether your needs can be met by a single supplier or whether you need to conduct a Further Competition process. Section 5 contains more information on how to place an order. Typically smaller, more straightforward requirements can be met by one supplier, larger, more complex requirements will require a Further Competition to achieve the best supply solution.

If you decide that a single supplier can meet your requirements based on the pricing and/or other information provided in the User Guide simply place an order with that supplier. A template order form is available for you to use at Appendix 2 of the User Guide.

If you decide you need to conduct a Further Competition you may do so by seeking quotations from **all** of the suppliers that are able to meet your requirements in your particular location. More specific details on how to conduct a further competition can be found in Section 5 of the User Guide.

Quote ESPO framework reference 115 on all correspondence.

About ESPO and Our Frameworks

ESPO is a not for profit, self-funded organisation and therefore you will not be charged any fees for accessing this framework.

ESPO's specialist buying teams have extensive experience of providing high quality procurement solutions to the public sector on a nationwide basis.

At ESPO we use our expertise to work with our strong and varied supply chain to bring you the best value procurement solutions possible.

We have over 30 years of experience in public sector procurement. All of our frameworks are let in full compliance with UK procurement regulations (and the EU procurement directive).

ESPO is a local authority owned purchasing and supply consortium. It is jointly owned by the county councils of Cambridgeshire, Leicestershire, Warwickshire, Lincolnshire and Norfolk and city councils of Leicester and Peterborough.

This framework has been established through a collaborative procurement exercise undertaken by ESPO on behalf of the Pro5 group of professional public sector buying organisations.

2. Services available via this framework

The framework is essentially a select list of suppliers, all with a proven and successful track record of delivering outdoor playground equipment and associated services, from whom customers may set up supply arrangements quickly and simply.

The categories of service included in the framework are as follows:

- **Schools Market / Low Number of Suppliers** – Metal, timber and/or plastic playground equipment and surfacing from **five** supplier's ranges. Intended for use mainly by schools, parish councils and other customers who are looking for only a small number of quotations if conducting a **further competition** and generally but not exclusively a small scale project. **Includes a call-off price list for low level activity trails.**
- **Large Projects / Higher Number of Suppliers** – A fantastic wide range of equipment is available to meet all needs, includes metal, timber and plastic playground equipment and surfacing options, from **nine** supplier's ranges. Includes innovative and traditional play equipment such as electronic, sand & water, musical items and parkour areas. Intended for use by customers looking for a higher number of responses and to give more choice. It is envisaged this lot will be used mainly for high value projects and will be used mostly by larger Councils or customers looking for more choice and primarily used for **further competitions**. The schemes may be of a more complex nature and suppliers will be able to offer stakeholder engagements with the general public, community groups and the police etc. **Includes a call-off price list for traditional play equipment areas.**
- **Natural Play Areas / Timber Play Equipment** - For customers who require the creation of natural looking play areas using natural materials and landscape design. The contract offers a choice of **four** suppliers for purchase via the **further competition** process. It is intended for use by customers looking to establish a natural play environment using natural materials to give children the opportunity to play in, around and to interact with natural elements and one where they can experience risk and challenge.
- **Multi Use Games Areas (MUGAs)** - For all types of Multi Use Games Areas, suitable for schools and local authority public areas and divided into two categories, Metal and Timber. A range of ball courts and goal units covering a range of activities including football, basketball, netball, cricket, tennis, hockey and roller-skating.
 - Metal** – A choice of **three** suppliers, for purchase by **further competition** or a **call-off price list**.
 - Timber** – A choice of **three** suppliers, for purchase by **further competition** or a **call-off price list**.
- **Skate / BMX Parks** - For customers who require a skateboard/skate and BMX park, this lot is divided into two categories, in-situation wet pour concrete parks and pre-fabricated equipment which has a choice of concrete and metal units.
 - **In-Situ Wetpour Concrete** – Built on site with concrete poured in-situation for supply of top of the range skate parks, for purchase by **further competition** from a choice of **three** suppliers.
 - **Pre-Fabricated Units** – With options for both pre-cast concrete and steel units which can be purchased by **further competition** or a **call-off price list**.
- **Outdoor Fitness Equipment** - For customers who require Cardio Vascular (CV) and Strength fitness equipment suitable for outdoor use in public spaces and schools, for purchase by **further competition** from a choice of **three** suppliers or a **call-off price list**.
- **Bespoke Designed Play Equipment** - For the design, construction and installation of playground equipment of an original design from the clients own specification, for example designed to a theme that reflects a local community such as mining or fishing, an event such as a famous battle or story such as the tale of King Arthur. For purchase by **further competition** from a choice of **five** suppliers.
- **Line/Play Design Marking** - For the provision of line marking for courts and designs for playgrounds, one supplier offering markings in both **Paint** and **Thermoplastic**, a sample of what is available is presented in a **call-off price list**.
- **Wetpour Rubber Safety Surfacing** - Prices for the provision of wetpour rubber safety surfacing from one supplier with a **price schedule guide** using the table of prices based on thickness and area.
- **Impact Absorbing Play Carpet** - Prices from a choice of **two** suppliers by either **further competition** or **call-off price list** using the table of prices based on size of area.
- **Rubber Tiles for Safety Surfacing including Grass reinforcement tiles** - Prices for the provision of rubber safety tiles from a choice of **three** suppliers by either **further competition** or **call-off price list** using the table of prices based on thickness and area.
- **Inspection Reports** -For the inspection of existing playground equipment to BSEN 1176 and BSEN 1177 and providing risk assessments and guidance on maintenance as appropriate. Inspections to include all types of outdoor playground equipment, play areas, skate parks and outdoor sports goals. **One** supplier so no need for further competition.

3. Supplier Information

Suppliers by Service Category

The following information details the service categories and the suppliers that have been included on the framework (in alphabetical order by category, they are not ranked in any way) that you may invite for further competition engagements, more details of how to conduct further competitions can be found in section 5 'How to place an order'.

Product Category	Suppliers
Schools Market / Low Number of Suppliers	Eibe Play HAGS-SMP Proludic Russell Leisure Wicksteed Playscapes
Large Projects / Higher Number of Suppliers	Eibe Play HAGS-SMP Kompan Ludus Leisure Playdale Playgrounds Proludic Russell Leisure Sutcliffe Play Wicksteed Playscapes
Natural Play Areas / Timber Play Equipment	Eibe Play HAGS-SMP Sutcliffe Play Wicksteed Playscapes
Multi Use Games Areas (MUGAs) - Metal	HAGS-SMP Proludic Sutcliffe Play
Multi Use Games Areas (MUGAs) - Timber	Kompan Playdale Playgrounds SJ Danby t/a Playscheme
Skate / BMX Parks - In-Situ Wetpour Concrete	Bendcrete Skateparks Freestyle Skateparks Gravity Engineering
Skate / BMX Parks - Pre-Fabricated Units Pre-cast Concrete: Metal:	Bendcrete Skateparks HAGS-SMP Eibe Play Park Leisure Wicksteed Playscapes
Outdoor Fitness Equipment	Caloo The Great Outdoor Gym Co. Wicksteed

Bespoke Designed Play Equipment	Eibe Play Ltd HAGS-SMP Proludic Russell Leisure Sutcliffe Play
Line / Play Design Marking Paint & Thermoplastic	Parkdale Play & Leisure (PPL)
Wetpour Rubber Safety Surfacing	Pennine Playgrounds
Impact Absorbing Play Carpet	Durasport Fenland Leisure
Rubber Tiles for Safety Surfacing including Grass reinforcement tiles	PHS (Matta) Parkdale Play & Leisure Pennine Playgrounds
Inspection Reports	HAGS-SMP

Supplier Contact Details inc Geographical Coverage

For quick reference, here are the names, contact details and geographical coverage for the suppliers included in the framework. Pricing information is shown in Section 4. Suppliers are listed in alphabetical order and are not ranked in any way.

When communicating with suppliers please refer to ESPO framework 115 in all correspondence.

Supplier	Contact Details	Geographic Coverage
Bendcrete Leisure Ltd 7 Nuffield Way Abingdon OX14 1RL	Contact: Wendy Davies Tel: 01235 534359 Fax: 01235 543139 Email: wendy@bendcreteskateparks.com	National
Caloo Ltd Unit 12 Boxted Farm Berkhamstead Road Hemel Hempstead HP1 2SG	Contact: Andrew Kime Tel: 0845 055 8218 Fax: 0845 055 8219 Email: andrew.kime@caloo.co.uk	National
Dura-Sport Ltd Unit C2 Chartwell Point Chartwell Drive Wigston Leicestershire LE18 2FT	Contact: Andy Stevenson Tel: 0116 281 3200 Fax: 0116 281 3202 Email: andy@dura-sport.co.uk	National
Eibe Play Ltd Home Farm A3 Bypass Road Hurtmore Surrey GU8 6AD	Contact: Mark Gornall Tel: 01483 813834 Fax: 01483 813851 Email: mgornall@eibe.co.uk	National
Fenland Leisure Products Ltd Fenland House Padgetts Road Christchurch Wisbech Cambridgeshire PE14 9PJ	Contact: Louise Stevenson Tel: 01354 638359 Fax: 01354 638464 Email: louise@fenandleisure.co.uk	National
Freestyle Skateparks Ltd 135A High Street Rickmansworth Hertfordshire WD3 1AR	Contact: Justin Sharp Tel: 01923 777111 Fax: 01923 777405 Email: Justin@freestyleskateparks.com	National

Supplier	Contact Details	Geographic Coverage
Gravity Engineering Ltd 21 Shamrock Way Hythe Hampshire SO45 6DY	Contact: Brendan Jarvis Tel: 02380 843720 Fax: 02380 843180 Email: brendan@gravityparks.co.uk	National
HAGS-SMP Ltd Clockhouse Nurseries Clockhouse Lane East Egham Surrey TW20 8PG	Contact: John Cox Tel: 01784 489100 Fax: 01784 431079 Email: sales@hags-smp.co.uk	All except Northern Ireland
Kompan Ltd 21 Roebuck Way Knowhill Milton Keynes Buckinghamshire MK5 8HL	Contact: Chris Dixon Tel: 01908 210002 Fax: 01908 201007 Email: chrdix@kompan.com	National
Ludus Leisure Ltd Brooklyn Main Street Tollerton York YO61 1QQ	Contact: Leigh Wadsworth Tel: 01347 824902 Fax: 01347 822146 Email: info@ludusleisure.co.uk	National
PHS Ltd t/a Matta Products PHS Group Block B Western Industrail Estate Caerphilly CF83 1XH	Contact: Tom Johnston Tel: 0773 666 2683 Fax: 01234 314 307 Email: tomjohnston@phs.co.uk	All except Northern Ireland
Park Leisure Pivington Mill Pluckley Ashford Kent TN27 0PG	Contact: Cassie Smith Tel: 01233 840141 Fax: 01233 840202 Email: cassie.smith@parkleisure.com	National
Parkdale Play & Leisure Ltd (PPL) The Sidings Business Park Skipton North Yorkshire BD23 1TB	Contact: Richard Patchett Tel: 01756 700123 Fax: 01756 700855 Email: sales@parkdaleplay.co.uk	National
Pennine Playgrounds Ltd Waterside Business Park Keighley Road Silsden West Yorkshire BD20 0EA	Contact: Vicki Braithwaite Tel: 01535 656500 Fax: 01535 656600 Email: Vicki@pennineplaygrounds.co.uk	National

Supplier	Contact Details	Geographic Coverage
Playdale Playgrounds Ltd Haverthwaite Ulverston Cumbria LA12 8AE	Contact: Julia Nicholson Tel: 01539 539738 Fax: 01539 531539 Email: Julia@playdale.co.uk	National
Proludic Ltd The Pump House Abbey Road West Bridgford Nottigham NG2 5NE	Contact: Angela Bradshaw Tel: 0115 982 3980 Fax: 0115 982 3985 Email: info@proludic.co.uk	All except Northern Ireland
Russell Leisure Ltd t/a Russell Play Brightwater House Market Place Ringwood Hants BH24 1AP	Contact: Adrian Parker Tel: 01590 675652 Fax: 01590 670092 Email: adrian.parker@russell-play.com	National
S J Danby t/a Playscheme Unit G8 Elvington Industrial Estate York Road Elvington York YO41 4AR	Contact: Alan Mitts Tel: 01904 607677 Fax: 01904 608458 Email: alan@play-scheme.co.uk	East Midlands, North East and Yorkshire & The Humber
Sutcliffe Play Ltd Waggon Lane Upton Pontefract West Yorkshire WF9 1JS	Contact: Tom Matthews Tel: 01977 653200 Fax: 01977 653222 Email: tom@sutcliffeplay.co.uk	National
The Great Outdoor Gym Company Unit 40 The Base Dartford Business Park Victoria Road Dartford Kent DA1 5FS	Contact: Matt Delaney Tel: 01322 314961 Fax: 01322 314971 Email: matt@gogc.com	National
Wicksteed Leisure Ltd t/a Wicksteed Playscapes Digby Street Kettering Northants NN16 8YJ	Contact: Laura Anderson Tel: 01536 517028 Fax: 01536 410633 Email: sales@wicksteed.co.uk	National

4. Pricing Information

This section is still being finalised and will be added as soon as possible to allow for call-off purchases where appropriate.

5. How to place an order

Step 1

By reference to **www.espolealingdirect.org** check you have the latest issue of the User Guide.

Complete the Customer Access Agreement (see Appendix 1) and send it to ESPO who will counter sign the agreement and return it to you.

This doesn't commit you to anything, but should you go ahead and use the framework it will form part of your own audit trail, helping to evidence the fact that you are procuring using the framework, and are therefore exempt from undertaking time consuming EU-compliant advertising and supplier vetting.

Step 2

There are two ways of procuring from the framework.

- Call-off without competition
- Further competition

These two approaches are explained in more detail below, to help you select the most appropriate method for your particular circumstances and requirements.

Call-off without competition

- If you can identify the supplier which best meets your requirements based upon the information provided in this guide, and you are as certain as you reasonably can be that none of the others would be suitable, then it is possible to simply place your order with that supplier.
- Contact your chosen supplier direct and place your order, quoting **ESPO Framework 115**.
- An example call-off order form is included at Appendix 2 for you to use.
- Ensure you receive confirmation from the supplier of the quoted prices for your specific order requirements.

If you are considering accessing the framework in this way, then you should bear in mind that you may be asked to demonstrate that despite the absence of competition, you have secured value for money.

If a client needs to seek pricing information from a supplier (i.e. obtain a quotation or tender) before they are able to place an order, then they are in effect running a further competition and should do so in accordance with the rules set out below.

Further competition

A further competition is simply an exercise to reopen competition under the framework, intended to secure formal quotations from some or all of the suppliers listed on the framework, tailored to your precise requirements. Because it is based on simple, competitive tender process, it offers you a way of testing and demonstrating value for money.

Template further competition documentation is available free of charge from ESPO. Please contact the ESPO Buyer named on page 2 of this document.

Before you start the further competition process it is a good idea if you have thought about exactly what it is that you want from your supplier. Compiling a clear list of requirements will enable suppliers bidding for your contract to offer a service that meets your needs in the most cost-effective way.

To be compliant with procurement law, your competition must be conducted in accordance with the following:

- You must invite all suppliers who are parties to the framework, except those (if any) who clearly cannot meet your requirements, for example they do not service your geographical location or do not provide the element you require, as shown in Section 3.
- Your tender document must describe the requirement, and tell bidders the basis on which you will evaluate their offers (e.g. price, product range, etc. together with an indication of the relative importance of these criteria).
- Procurement regulations require that further competition tenders are evaluated using the same criteria as those used when the framework itself was first established. But at the further competition stage you are allowed to define the criteria in more detail and to vary the weightings (i.e. the relative importance) given to each. Details of the evaluation criteria used by ESPO can be found in Section 6.
- You must allow bidders sufficient time to prepare and submit their bids. Normally three to four weeks should be regarded as the minimum.
- Bids must be submitted in written hard copy format and not via email in order to adhere to the point below.
- You must tell suppliers the closing time and date for submitting their bids. You must not open any bids before this deadline, or consider any bids which arrive late.

- Evaluate the tenders submitted by the required deadline. You must treat all suppliers equally and fairly, and evaluate all bids in the way you described in the tender documentation.
- Advise all suppliers of the outcome via email or by letter – see Remedies Rules below.
- Place an order with the successful supplier quoting **ESPO Framework 115**, using the template included in Appendix 2.

Remedies Rules

There is a technical matter which customers should be aware of relating to the award of all contracts, called the **EU Remedies Directive (Remedies Rules)**. If the total (i.e. lifetime) value of your contract exceeds the threshold set by the EU (currently this is about £170,000) then a *Remedy of Ineffectiveness* may apply if the contract award is challenged by an unsuccessful supplier.

However if a voluntary '**standstill period**' is applied to the award of a contract (which must be of at least ten days (if the notification is by email) and fifteen (if the notification is by post) between advising suppliers the outcome of the exercise and making a formal award of contract), then this avoids the *Remedy of Ineffectiveness*.

The way in which suppliers should be advised of the outcome of the tender exercise, at the start of the standstill period, is set out in the Public Contracts Regulations. In summary, the Regulations say that you must tell all suppliers the name of the company which won the contract, together with the winning score against each of the evaluation criteria you used, the particular supplier's own score and the characteristics and relative advantages of the winning bid.

Step 3

Complete the Confirmation of Award Form (see Appendix 3) and send it to ESPO.

This should be completed whether you have placed a call-off order or conducted a further competition as this will allow ESPO to monitor the spend being put through to suppliers under the framework agreement.

6. Managing the Framework

As this is a framework from which customers can call off or conduct further competitions, ESPO will not be involved in the day-to-day management of the suppliers and the solutions and services they provide. ESPO will however be closely monitoring the progress and performance of the arrangements throughout the entire duration of the framework to ensure that customers' needs are being adequately met.

It is important therefore that each time the framework is used, customers contact ESPO to advise when and for what the framework is being used, using the Customer Access Agreement and Confirmation of Award Forms described above. This will also enable ESPO to put customers in touch with each other (by mutual agreement) where similar requirements exist, to get references, feedback and information.

In monitoring this contract, any feedback you wish to provide should be sent to the ESPO buyer named in the contact details on page 2 of this document.

7. Background to the Procurement

This section is simply background information, which may be of interest to organisations who are considering using the framework and wish to understand a little more about the process ESPO follows when setting them up.

How ESPO established the framework

- ESPO, acting on behalf of the Pro5 group, has established the terms and conditions which will apply to any call-off arrangements by customers during the period of the framework. ESPO reserves the right in exceptional circumstances to vary the composition of the framework. For example if a supplier fails significantly to perform as required it may be removed.
- A formal notice inviting expressions of interest from potential suppliers was published in the Official Journal of the European Union (or 'OJEU') in December 2012 (OJEU ref 2012 238/392304. The corresponding award notice is OJEU ref 2013/S 149-259131.
- The procurement process adopted by ESPO was based upon the restricted tendering procedure as detailed in the European Communities Combined Directive (2004/18/EC).
- A detailed and thorough evaluation of the tenders that were submitted was completed by officers of ESPO. The objective of the framework was not to promote one single preferred supplier but instead to offer a range of service solutions from a number of leading suppliers in the marketplace.

Evaluation Scheme

As there were a number of different lots and sub-lots, each sub-lot was evaluated separately to ensure tenders for the same sub-lot were assessed against each other.

The evaluation involved two stages, qualifying through a ranked Pre Qualifying Questionnaire and Award; those offers that scored high enough at the PQQ assessment stage against the qualifying criteria were then scored against the award criteria.

The qualifying criteria included assessment of the following; compliance of bid, financial standing, insurance levels, experience and references, quality, environmental and health & safety procedures, business continuity plans, compliance with contract regulations and compliance with the terms and conditions.

The award criteria were divided into five areas, price, play (or Functional) Value, Warranty/Guarantee, Product Range and Presentation and the specific weightings used were as follows:

- | | |
|------------------------------|-----|
| • Price* | 40% |
| • Play (or Functional) Value | 30% |
| • Warranty / Guarantee | 10% |
| • Product Range | 10% |
| • Presentation | 10% |

The total scores added together gave the grand total of points and a position on the framework was awarded to the highest scoring suppliers in each of the sub-lots as described in Section 2 of the user guide.

*** The right is reserved to remove the price factor altogether from further competition award criteria if it is not required, such as when customers have a fixed budget and so are only interested in what suppliers can offer for a set price limit and expect all bids to match that price.**

Framework documentation

If you, or your procurement or legal advisors wish to see copies of any of the documentation we used in setting up the framework (such as the 'OJEU' notice, invitation to tender, etc.) please contact the ESPO Buyer named on page 2 and this will be arranged.

Period of the framework & right to extend

This EU compliant framework commenced on 1st August 2013 and will be in place until 31st March 2016 (with an option to extend the arrangement by a further 12 months subject to suppliers' performance).

Please note that the duration of the individual contracts awarded under the framework should not be longer than four years. The length of the call-offs should be appropriate for the goods and/or services in question, in line with value for money. It may be necessary for individual call-offs, awarded during the period in which the framework is on operation, to continue beyond the end of the framework arrangement. This should not be done in order to circumvent the rules – for example, it would be difficult to justify awarding a call off for 12 months just before the end of the framework agreement, where the normal length for such call-offs is one month.

Contractual Structure

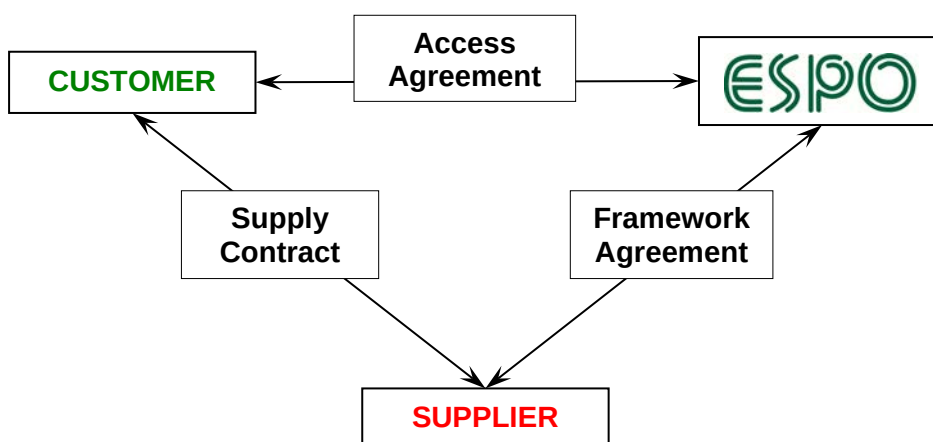
A body wishing to procure using the framework (the Customer) will enter into a contract for the supply of outdoor playground equipment usually based on the pre-agreed terms and conditions of contract. A copy of these is included in Appendix 4.

Whilst these pre-agreed terms and conditions may be amended by customers conducting a further competition; any such amendments must not vary too substantially from the original terms agreed and must be communicated to suppliers on the framework accordingly.

It is anticipated that day to day transactions (including undertaking further competitions, the appointment of suppliers and delivery of and payment for services) will all be conducted directly between the customer and supplier.

The contract structure diagram shown at Fig.1 illustrates the relationship between the parties to the arrangement.

Fig.1



APPENDIX 1

CUSTOMER ACCESS AGREEMENT

**ESPO Framework Agreement
115 Outdoor Playground Equipment**

TO BE COMPLETED BY THE CUSTOMER

Before conducting any activity under this ESPO framework, please complete this form in BLOCK CAPITALS and return it (by post, fax or email) to ESPO.

AGREEMENT: I confirm that the organisation detailed below wishes to access the above-mentioned ESPO framework agreement, and that in doing so will act in accordance with the guidance and instructions set out in the relevant ESPO User Guide, and in accordance with the Public Contracts Regulations 2006.

Signature:

Date:

Name of person signing this form:

Position:

Name of authority, council, etc.:

Address:

Telephone:

E-mail:

Solution of Interest:

To return this form, please post it to

**ESPO (Building & Facilities Management), Barnsdale Way,
Grove Park, Enderby, Leicester, LE19 1ES**

Alternatively, please fax to 0116 294 4397 or email to s.godrich@espo.org

ESPO ACKNOWLEDGEMENT (TO BE COMPLETED BY ESPO)

Name:

Signature:

Position:

Date:

 Framework 115

ORDER FORM

(PURSUANT TO A FRAMEWORK AGREEMENT BETWEEN ESPO AND [Supplier Name]

DATED [] ("the framework agreement")

Date:		Telephone Number:	
Customer Acc Number:		Fax Number (if req'd):	
Customer Name:		Email Address:	

Project / Item Reference. No	Qty	Description of Project / Item	R.S.P (if applicable)	Discount (if applicable)	Price
			£	%	£
			Delivery charge (if applicable)		£
			Total Price (ex VAT)		£

CONFIRMATION OF AWARD

ESPO Framework Agreement 115 Outdoor Playground Equipment

TO BE COMPLETED BY THE CUSTOMER:

I confirm the details of the following award of contract under ESPO framework agreement ref 115:

Name of Client Organisation:	
Address:	
Name of person signing this form:	
Signature:	
Date:	
Position:	
Telephone:	
E-mail:	
Description of items/service procured:	
Awarded Supplier:	
Value of Award:	£
Date of Award:	
Savings Achieved:	
Are you happy for ESPO to use your example as a case study?	YES NO

To return this form, please post it to **ESPO (Building & Facilities Management), Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES**

Alternatively, please fax to **0116 294 4397** or email to s.godrich@espo.org

APPENDIX 4

TERMS OF AGREEMENT

ESPO FRAMEWORK 115 – OUTDOOR PLAYGROUND EQUIPMENT

A copy of these order terms should be included with any call-off order placed with a supplier on the framework or should form part of your further competition tender documentation.

Definitions used in these Order Terms shall have the same meaning as those set out in the Framework Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Interpretation

1.1 As used in this Agreement:

1.1.1 the terms and expressions set out in Schedule 2 shall have the meanings ascribed therein;

1.1.2 the masculine includes the feminine and the neuter; and

1.1.3 the singular includes the plural and vice versa.

1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.4 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

1.5 In the event and to the extent only of any conflict between the Clauses and the Schedules or the Order, the Clauses shall prevail.

1.6 The definition of words and phrases throughout this Agreement are contained within Schedule 2 Appendix 1 at page 48.

2. Supplier's obligations

2.1 The Supplier shall supply the Equipment in accordance in all respects with the terms of this Agreement and the terms and conditions of the relevant Order

2.2 For the avoidance of doubt the Customer shall not be responsible for any Equipment that is delivered by the Supplier and is not the subject of a valid Order.

2.3 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.

2.4 The Equipment to be supplied under the Order shall be delivered to the place specified in the Order, in such quantities or numbers and at such times as the Customer shall specify from time to time in the Order and in accordance with the terms of the Order. Time for delivery of the Equipment shall be of the essence.

2.5 The Supplier shall ensure that the Equipment meets the requirements of the Specification and where the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that particular purpose.

2.6 The Supplier warrants to its best endeavours that the design, construction and quality of the Equipment to be supplied under the Order shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Equipment is supplied.

2.7 All Equipment shall comply with the appropriate specification or code of practice of the British Standard Institution or any European equivalent if there is a specification or code current for the Equipment during the Contract Period.

2.8 The Supplier shall use its reasonable endeavours to provide, for the purposes of the Order, Equipment whose manufacture, use and disposal have the least practicable harmful impact on the environment.

2.9 The Supplier shall be deemed to have satisfied itself as to the sufficiency and correctness of the Charges. Unless otherwise expressly stated in the Order the Charges shall cover all the Supplier's obligations and everything necessary for the supply of the Equipment under the Order.

2.10 Unless otherwise expressly stated in the Framework Agreement or the Order no claim by the Supplier will be allowed for any addition to the Charges on the grounds of any matter relating to any document forming part of the Framework Contract or the Order or any ambiguity or discrepancy therein on which an experienced supplier could have satisfied himself by reference to the Customer or any other appropriate means.

3. Customer's obligations

3.1 The Customer shall select a Supplier for Orders in accordance with the criteria outlined in Schedule 4 of the Framework Agreement.

3.2 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.

3.3 The Customer shall make available staff to satisfy the Acceptance Criteria (where applicable).

3.4 The Customer shall respond to any reasonable request for information from the Supplier.

3.5 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Schedule 4 of the Framework Agreement and in accordance with the Public Contracts Regulations 2006.

4. Acceptance of the Equipment

4.1 The Supplier shall permit the Customer or authorised representatives to make any inspections or tests which may reasonably be required and the Supplier shall afford all reasonable facilities and assistance free of charge at the Supplier's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests of the Equipment or inspections shall constitute a waiver by the Customer of any rights or remedies in respect of the Equipment and, in particular, the Customer retains the right to reject the Equipment

4.2 Unless formal acceptance testing in accordance with clauses 4.6, 4.7, 4.8, 4.9, 4.10., 4.11 and 4.12 is identified as a requirement on the Order then in respect of Equipment supplied the Customer may by written notice to the Supplier reject any of the Equipment which fails to conform to the approved sample or fails to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Customer of the Equipment concerned. If the Customer shall reject any of the Equipment pursuant to this clause the Customer shall be entitled (without prejudice to other rights and remedies) either:

(a) to have the Equipment concerned as quickly as possible and in any event within 7 days either repaired by the Supplier or (as the Customer shall elect) replaced by the Supplier with Equipment which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

(b) to treat the Agreement as discharged by the Supplier's breach and require a refund from the Supplier in respect of the Equipment concerned together with payment of any additional expenditure over and above the price incurred by the Customer in obtaining replacement goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement equipment.

4.3 The signing by the Customer of a receipt note for the Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.

4.4 Unless otherwise required in the Customer's Order, the Supplier shall guarantee the Equipment for 12 Months from delivery. If the Customer shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Equipment as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Customer shall elect) without cost to the Customer.

4.5 Any Equipment rejected or returned by the Customer as described in clause 4.2 shall be returned to the Supplier at the Supplier's risk and expense.

4.6 The Customer shall accept the Equipment in accordance with the Acceptance Criteria.

4.7 The Acceptance Criteria shall be recorded as unsuccessful and the supplier notified accordingly where any of the relevant Acceptance Criteria are not met.

4.8 If the Acceptance Criteria, in respect of any Equipment have been recorded as unsuccessful pursuant to Clause 4.3, the Customer shall have the right either:

4.8.1 to accept such part of the Equipment as the Customer may decide and pay a pro rata Charge therefore or such other charge, as may be agreed between the parties;

4.8.2 without prejudice to its other rights and remedies, to extend the Acceptance Criteria Period for a period or periods, specified by the Customer, during which the Supplier shall correct the fault which caused the Acceptance Criteria to be recorded as unsuccessful; or

4.8.3 to terminate the Order (such termination to be without prejudice to the other rights and remedies of the Customer and the other obligations hereunder of the Customer and the Supplier).

4.9 In the event that the Customer extends the Acceptance Criteria Period for a period pursuant to Clause 4.8.2 and the Acceptance Criteria have not been recorded as successful by the end of that period, the Customer shall have the right either:

4.9.1 to accept such of the Equipment as the Customer may decide and pay a pro rata Charge therefore or such other charge, as may be agreed between the parties;

4.9.2 to extend the Acceptance Criteria Period for a further period in accordance with Clause 4.8.2;

4.9.3 to terminate the Order (such termination to be without prejudice to the other rights and remedies of the Customer and the other obligations hereunder of the Customer and the Supplier).

4.10 Without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Customer under the Order or otherwise, in the event that the Customer elects to terminate the Order pursuant to Clause 4.8.3 or Clause 4.9.3, the Customer shall be entitled to return any or all of the Equipment which has previously been accepted by the Customer for the Order and receive a full refund of any monies paid in connection therewith.

4.11 Notwithstanding the provisions of this clause 4.1 in the event the Customer uses the Equipment other than for the purpose of testing it or with the agreement of the supplier, the Customer shall be deemed to have accepted the Equipment.

5. Liquidated Damages

5.1. Where liquidated damages apply then without prejudice to any other remedies available to the Customer:

5.1.1. if there is delay in delivery such that the Equipment is not delivered in accordance with the period identified in the Specification or such other period as may be agreed between the Customer and the Supplier then the Supplier shall pay to the Customer as liquidated damages for each day of delay the amount specified in the Order or if none is specified then a sum equal to ten percent of the value of the Equipment ordered up to the end of the Liquidated Damages Period. Such payment shall be in full and final settlement of the Supplier's financial liability for any loss or damage incurred by the Customer during the Liquidated Damages Period, and

5.1.2. if the Equipment has not been delivered by the end of the Liquidated Damages Period, the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.

5.1.3. if the Acceptance Criteria have not been recorded as successful by the end of the Liquidated Damages Period, the Customer shall be entitled to claim any remedy available to it for loss or damage incurred by it thereafter.

6. Title and Risk

6.1. Title to and risk in the purchased Equipment shall vest in the Customer upon acceptance of the said Equipment in accordance with Clause 4.

7. Charges

7.1. In consideration of the supply of the Equipment in accordance with the terms of the Framework Agreement, this End User Agreement, the Customer shall pay the Charges calculated in accordance with Schedule 3 of the Framework Agreement and published from time to time by ESPO therein and in accordance with the invoicing procedure and payment profile specified in Schedule 2-2.

7.2. Payment shall be made within thirty (30) days of receipt by the Customer (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of Schedule 2-2, from the Supplier.

7.3. The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.

8. Recovery of Sums due

8.1. If any sum of money shall be due from the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement or any other agreement with the Customer.

9. Monitoring and Reporting

9.1. The Supplier shall:

9.1.1. appropriately manage the Equipment that it provides under this Contract;

9.1.2. be required to provide to the Customer such management information as it reasonably requires.

9.1.3. on reasonable notice grant to the Customer's external and internal auditors access to any relevant data or documentation relating to the Framework Contract and Order and the supply of the Equipment for the purpose of carrying out an audit.

10. Supplier's Personnel

10.1. The Supplier shall select, employ, train, furnish and deploy in and about the performance of the Agreement only such persons as are of good character and who are appropriately skilled and experienced.

10.2. Where the supply of the Equipment requires any of the Supplier's employees, sub-contractors and agents to work in a Regulated Activity with children, the Supplier will make checks in respect of such employees and agents with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and that the appropriate check of the Children's Barred List relating to the protection of children.

10.3. The Supplier will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees, sub-contractors and agents

10.4. The Supplier will ensure that all enhanced checks for a regulated activity including the appropriate barred list check or checks are renewed every three years.

10.5. The Supplier will not employ any person or continue to employ any person to supply the Equipment who appears unsuitable as a result of information received from the checks, and will notify the Customer immediately of any decision to employ such a person in any role connected with this Agreement or any other agreement or arrangement with the Customer.

10.6. The Supplier and the Supplier's sub-contractors, staff and agents shall comply with all reasonable requirements of the Customer at the Premises.

10.7. The Supplier shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of Clauses 8.1, 8.2 and 8.3 above.

10.8. The Supplier, its agents, sub-contractors and suppliers shall employ sufficient staff to ensure that the Equipment is supplied at all times and in accordance with the Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to supply the Equipment in accordance with the Agreement during staff holidays or absence through sickness or any other cause.

10.9. The Customer, acting reasonably, shall have the right to refuse access to the Premises at any time to any employee of the Supplier, its agents, sub-contractors or suppliers. The exercise of this right shall not diminish the Supplier's obligation of performance arising under the Agreement.

11. Warranties and Representations

11.1. The Supplier warrants and represents that:

11.1.1. at the Acceptance Date the Equipment shall meet the Acceptance Criteria and the requirements specified in the Tender;

11.1.2. unless otherwise agreed in writing by the parties at the Acceptance Date the Equipment shall operate in a normal environment in accordance with the Specification;

11.1.3. the Customer's possession, use and operation of the Equipment shall not infringe any intellectual property rights of any third party;

11.1.4. the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;

11.1.5. the Customer shall acquire title to the Equipment free from all encumbrances and the Customer shall have the right to quiet possession of the Equipment;

11.1.6. the Equipment shall be capable of operation and maintenance for at least 5 years from the date it passes the Acceptance Criteria specified in Schedule 2 Appendix 3.

12. Insurance and Indemnity

12.1. Each party shall each indemnify the other against all damages, losses, costs, compensation or expenses arising from the death or injury of any person fraudulent misrepresentation and against all loss or damage to any physical property, to the extent that the same are due to any act, default or negligence of that party, their sub-contractors, servants or agents and against all actions, claims demands or proceedings in respect thereof or in relation thereto.

12.2. Without prejudice to its liability to indemnify the Customer, the Supplier shall take out and maintain:

12.2.1. Public Liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, is not less than £10,000,000.

12.2.2. Employers Liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, be not less than £10,000,000.

12.2.3. Product Liability insurance, which shall, for any one occurrence or series of occurrences arising out of one event, is not less than £10,000,000.

12.3. Subject always to Clause 12.1; in no event shall either party be liable to the other for:

12.3.1. loss of profits, business, revenue, goodwill or anticipated savings; and/or

12.3.2. indirect or consequential loss or damage.

12.4. The provisions of Clause 12.3 shall not be taken as limiting the right of the Customer to claim from the Supplier for:

12.4.1. additional operational and administrative costs and expenses howsoever caused; and/or

12.5. Subject to the provisions of clauses 12.1, 12.2, 12.3, 12.4 and 21.3 the liability of either party for Defaults shall be subject to the financial limits set out in this clause 12 (save where such damages relate to a claim for personal injury or death where the Party's liability shall be unlimited).

(a) in respect of the indemnity in clause 15 intellectual property rights, shall be unlimited;

(b) for all loss of or damage to the property of the other including but not limited to premises, property or assets shall in no event exceed ten million pounds £10,000,000.

(c) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement the annual aggregate liability under the Agreement of either Party shall in no event exceed ten million pounds £10,000,000.

13. Infringement of Intellectual Property Rights

13.1. The Supplier shall fully indemnify and hold the Customer harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other intellectual property rights including any wrongful use of confidential information by the use or possession of the Equipment or any part thereof provided by the Supplier or licensed by the Supplier to the Customer under the Agreement subject to:

13.1.1. the Customer promptly notifying the Supplier of any alleged infringement and, subject to sub-clause 13.1.3 below, allowing the Supplier at their own expense to conduct all negotiations for settlement or litigation;

13.1.2. the Customer making no admission without the Supplier's written consent unless and until the Supplier shall have failed to take over the conduct of the negotiations or litigation;

13.1.3. the conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having given the Customer such reasonable security as the Customer may require for the compensation, damages, costs and expenses for which the Customer may become liable. The Customer at the Supplier's expense shall give the Supplier all available assistance.

13.2. If the Equipment or any part thereof becomes, or in the Supplier's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under sub-clause 13.1.1 above, the Supplier shall at its own expense negotiate to obtain the right for the Customer to continue to use the infringing items, if necessary by replacing, remove or modifying them, but without reducing their quality or ability to meet the Customer's requirements as specified by the Agreement.

15.1. The Supplier shall indemnify the Customer against all losses, costs, damages and expenses whatsoever during the period that the Customer is deprived of the use of the Equipment.

13.4. The Supplier shall not be liable under sub-clause 13.1.1 and 13.1.2 above for any such infringement or alleged infringement which arises as a result of the including in the Equipment or any items supplied by the Customer or any use of the Equipment for a purpose or in a manner different to that specified in, or reasonably to be inferred from, the Agreement.

14. Operating and Maintenance Documentation

14.1. The Supplier shall supply the Documentation with the Equipment upon delivery of the Equipment. All

Documentation shall be of the latest variant and shall match all upgrades to the Equipment.

15. Termination

15.1 By the Customer:

15.1.1 The Customer may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

15.1.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company; or

15.1.1.2 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or

15.1.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

15.1.2 The Customer may at any time by notice in writing terminate this Agreement forthwith, if the Supplier is in Default of any obligation under this Agreement and:

15.1.2.1 the Default is capable of remedy and the Supplier shall have failed to remedy the Default within thirty (30) days of written notice to the Supplier specifying the Default and requiring its remedy; or

15.1.2.2 the Default is not capable of remedy.

15.2 Termination in accordance with this Clause 15 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party.

15.3 In the event of any termination of this Agreement whether under this Clause 15 or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Customer under this Agreement or otherwise, the Customer shall be entitled to:

15.3.1 return any or all of the Equipment or any part thereof which have not been accepted pursuant to Clause 4 and the Supplier shall give the Customer a full refund of all Charges paid by the Customer to the Supplier in connection with such returned items;

15.3.2 obtain a refund of any Charges paid by the Customer in respect of any services which have not been performed by the Supplier in accordance with the terms of this Agreement.

16. Confidentiality

16.1 Each party:

16.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

16.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the

performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

16.2 The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Agreement:

16.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with the Agreement and only to the extent necessary for the performance of this Agreement;

16.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-contractors or agents otherwise than for the purposes of this Agreement.

16.3 Where it is considered necessary in the opinion of the Customer, the Supplier shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Supplier shall ensure that its staff, sub-contractors and agents are aware of the Supplier's confidentiality obligations under this Agreement.

16.4 The Supplier shall not use any Confidential Information it receives from ESPO, Pro5 or the Customer otherwise than for the purposes of this Agreement.

16.5 The provisions of Clauses 16.1 to 16.4 shall not apply to any Confidential Information received by one party from the other:-

16.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause);

16.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

16.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

16.5.4 is independently developed without access to the Confidential Information; or

16.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR pursuant to Clause 18 but only to the extent such disclosure is required.

16.6 Nothing in this Clause shall prevent the Customer from:

16.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Customer's accounts

16.6.2 disclosing any Confidential Information obtained from the Supplier to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the Agreement;

16.6.3 provided that in disclosing information under 16.6.2 the Customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.

16.7 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Agreement or any Order or disclose any information relating to or contained in the Agreement to any person who is not engaged in the performance of the Agreement.

16.8 In the event that the Supplier fails to comply with this Clause 16 the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.

16.9 The provisions of this Clause 16 shall apply notwithstanding termination or expiry of the Agreement.

17. Data Protection Act 1998

17.1 The Supplier shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998.

17.2 The Supplier shall not disclose Personal Data to any third parties other than:

17.2.1 to staff, sub-contractors and agents to whom such disclosure is reasonably necessary in order to perform the Agreement; or

17.2.2 to the extent required under a court order

provided that disclosure under clause 17.2.1 is made with the approval of the Customer and subject to written terms no less stringent than the terms contained in this Clause and that the Supplier shall give notice in writing to the Customer of any disclosure under clause 17.2.2 immediately it is aware of such a requirement.

17.3 The Supplier shall indemnify and keep indemnified the Customer against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause by the Supplier and/or any act or omission of any staff, sub-contractor or agent.

17.4 The Supplier is required to comply with the obligations set out in Principle Seven of the Data Protection Act 1998.

17.5 In this clause "Personal Data" means personal data as defined in the Data Protection Act 1998 which is supplied to the Supplier by the Customer therein or obtained by the Supplier in the course of performing the Agreement.

18. Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)

18.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.

18.2 The Supplier shall and shall procure that its sub-contractors shall;

18.2.1 transfer any request for information to the Customer as soon as practicable after receipt and in any event within two working days of receiving a request for information; and

18.2.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within seven working days (or such other period as the Customer requesting the information; and

18.2.3 Provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

18.3 The Customer shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;

18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and

18.3.2 is to be disclosed in response to a request for information and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.

18.4 The Supplier acknowledges that the Customer may be obliged under the FOIA or the EIR to disclose information;

18.4.1 without consulting the Supplier; or

18.4.2 following consultation with the Supplier and having taken its views into account.

18.5 The Supplier shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

18.6 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with Clause 18.4.

19. Loss of the Equipment

19.1 Notwithstanding the provisions of Clause 6 the Customer shall only be liable for any loss of the Equipment or any part thereof supplied under the Agreement while they are at the Premises prior to acceptance of the relevant

Equipment, if such loss is occasioned by the negligence or wilful acts or default of the Customer.

19.2 The Supplier shall, on being required by the Customer, make good any loss affecting the Equipment, whether such loss arises in the circumstances referred to in Clause 19.1 or otherwise, and shall notwithstanding such loss use all reasonable endeavours to proceed with and complete the supply of the Equipment in accordance with the Agreement. The Customer shall pay the costs of making good unless the loss is occasioned by the Default of the Supplier.

20. Damage to Plant, Tackle and Tools

20.1 All plant, tackle and tools at the Premises provided by or on behalf of the Supplier shall stand at the risk and be in the sole charge of the Supplier.

20.2 The Supplier shall be required to remove all such plant, tackle and tools which it brings to the Premises.

20.3 The Supplier shall ensure that all such plant, tackle and tools shall meet the minimum safety standards required by law.

21. Social Responsibility

21.1 The Supplier agrees that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.

21.2 The Supplier shall in all matters arising in the performance of the Agreement comply with the provisions of the Disability Discrimination Act 1995 and any regulations made there under.

21.3 The Supplier shall in all matters arising in the performance of the Agreement comply with the provisions of the Employment Equality (Age) Regulations 2006.

21.4 The Supplier must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and shall ensure that they perform their responsibilities under this Agreement with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups.

21.5 The Supplier shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving goods or services from, the performance of the Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.

21.6 ESPO, Pro5 and the Customer shall be entitled at ESPO's, Pro5's and the Customer's expense to inspect such books, accounts and records belonging to the Supplier as are necessary to demonstrate compliance with clauses 21.1, 21.2, 21.3, 21.4 and 21.5 above.

21.7 The cost to the Supplier of complying with this Clause 21 shall be included in the Charges.

22. Corrupt Gifts and Payments

22.1 The Customer shall be entitled to cancel and terminate the Agreement and to recover from the Supplier the amount of any loss resulting from such cancellation or termination if the Supplier or any person on its behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of the Agreement or any other contract with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Customer or if like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Customer the Supplier or any person employed by the Supplier or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.

22.2 The decision of the Customer shall be final and conclusive in any dispute, difference or question arising in respect of:

22.2.1 the interpretation of this Clause 22; or

22.2.2 the right of the Customer under this Clause 22 to terminate the Agreement

22.3 Any Clause limiting the Supplier's liability shall not apply to this Clause.

23. Force Majeure

23.1 For the purposes of the Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

23.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

23.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

23.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub contract or otherwise as a result of circumstances of Force Majeure.

23.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

24. Transfer and Sub contracting

24.1 The Agreement is personal to the Supplier. The Supplier shall not assign, novate, sub contract or otherwise dispose of the Agreement or any part thereof without the prior consent in writing of the Customer.

24.2 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

25. Amendments to the Agreement

25.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Customer and by a duly authorised representative of the Supplier. No variation of the End-User Agreement shall limit or remove the Suppliers obligations under the Framework Agreement".

26. Communications

26.1 Any notice which either party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other party at its address specified in the Order form either by (a) hand, (b) first class post or recorded delivery or, (c) facsimile, or (d) electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

26.2 Either party may change its address for service by notice as provided in this Clause 26.1.

27. Severability

27.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

28. Waiver

28.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

28.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

28.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 26.

29. Dispute Resolution

29.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either party notifying the other of the dispute such efforts shall involve the escalation of the dispute to a senior manager from each party.

29.2 If the parties fail to reach agreement within 25 working Days of reference pursuant to Clause 29.1 or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the Courts.

30. Law and Jurisdiction

30.1 This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

30.2 This Agreement is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

31. Customer Responsibilities

31.1 The Customer shall make available staff to satisfy the Acceptance Criteria (where applicable).

31.2 The Customer shall respond to any reasonable request for information from the Supplier.

31.3 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Agreement and in accordance with the Public Contracts Regulations 2006.

32. Entire Agreement

32.1 This Agreement together with the Framework Agreement and the Order constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referenced or referred to herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.